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No. 76-490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

LEHIGH AND NEW ENGLAND RAILWAY COMPANY,
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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MEMORANDUM IN OPPOSITION

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The opinion of the U.S. Court of Appeals (Pet. App., 1a-25a) is reported at 540 F.2d 71. The report of the Interstate Commerce Commission (Pet. App., 37a-93a) is published at 348 I.C.C. 251.

The proceedings in the Court of Appeals concerned a petition for review of orders entered by the Interstate Commerce Commission in a rulemaking proceedi[illegible]nsti-tuted under section 601(e) of Regional Rail Reorganization Act of 1973, 45 U.S.C. 791(e).

This legislation was before the court in other respects. *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

Petitioner, Lehigh & New England Railway Company, operates wholly within the Commonwealth of Pennsylvania. It challenges the I.C.C.'s regulations primarily on the ground that the agency declined to require that rent be paid to a carrier over whose lines the I.C.C. had directed another carier to operate.

Petitioner in early 1975 embargoed all shipments, alleging inadequate funds to continue railroad operations. The I.C.C. directed that neighboring carriers – Lehigh Valley Railroad Company and Reading Company – operate certain portions of Lehigh & New England Railway.

Petitioner now seeks compensation for "rent" by the Government, even though its operations were at a deficit, and even though the operations performed by the directed carriers also were at a deficit.

This case does not warrant plenary consideration by this Court. It is settled that a railroad may not discontinue operations without permission from state or federal regulatory agencies. *Palmer v. Massachusetts*, 308 U.S. 79 (1939); *New Haven Inclusion Cases*, 399 U.S. 392 (1970).

Petitioner is not entitled to enrichment based upon its own dereliction of its common carrier duties.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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